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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,851	08/13/2001	William James Harrison	ACS-55967 (27001)	8276

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EXAMINER

THALER, MICHAEL H

ART UNIT PAPER NUMBER

3731

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,851

Applicant(s)

HARRISON ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-15, 17-20, 22-31 and 33-40 is/are pending in the application.
4a) Of the above claim(s) 5, 7, 15, 18, 27, 33 and 36 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4, 6, 8-10, 12-14, 17, 19, 20, 22-26, 28-31, 34, 35 and 37-40 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: appendix A.

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Claims 5, 7, 15, 18, 27, 33 and 36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6.

Claims 1-4, 6, 8-10, 12-14, 17, 19, 20, 22-26, 28-31, 34, 35 and 37-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the subject matter in lines 6-7 is confusing and inaccurate since each peak of applicant's invention is, in fact, attached to other peaks. For example, in figure 7, the upper peak 26 of one cell is attached to the lower peak 26 of the same cell by struts 16 and 18 of the cell. Also, the upper peak 26 of one cell is attached to the upper peak 26 of an adjacent cell by struts 16, 16 of the two cells. Claims 10, 20, 28 and 31 are indefinite for the same reasons.

Claims 1-4, 6, 9, 10, 12-14, 19, 20, 22-26, 28-31, 34, 35 and 37-40 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hansen et al. (5,928,280). Note the attached appendix A, which depicts the embodiment of Hansen et al. described in col. 7, lines 13-16 wherein lines were added to the figure to depict the

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additional connecting sections described in col. 7, lines 13-16. In this embodiment, Hansen et al. disclose a plurality of rings wherein each ring includes a plurality of triangular cells, each cell including two V struts of different amplitudes (one V strut depicted as solid while the other depicted as striped with a single cross-hatching) and a connecting element (depicted with double cross-hatching) joining the plurality of rings by connecting the end of one cell of one ring to the end of the cell of an adjacent ring. In this embodiment, each cell is divided into two halves by a connecting element extending between apexes 4 and 6. Although each cell is so divided, the claims do not preclude a member from so dividing the cell. Although the V strut depicted as solid is not a perfect V, the V struts of applicant's invention are not perfect V's either, since they include a curvature along the legs of the V as well as a rounded apex which are absent from a perfect V. Thus, the term "V strut" used in this application is considered to mean a shape similar to a V. The strut depicted as solid is clearly very similar to a V. Alternatively, it would have been obvious that the Hansen et al. struts are V struts for these reasons. The subject matter in claim 1, lines 6-7, for example, is confusing and inaccurate as set forth in the paragraph above. As to claims 2, 25, 29, 34 and 35, the Hansen et al. ends of the

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V struts coincide at enlarged areas since the end portions of the struts depicted as solid have an enlarged width which inherently reduces stress concentrations. As to claims 3, 4, 14 and 19, the rounded point (col. 7, lines 10-11) of the Hansen et al. strut is curved and has a radius. As to claim 10, the Hansen et al. connecting elements that join adjacent rings are located at the small angle vertices. As to claims 28 and 31, the cells 2 of Hansen et al. are "triangular" as claimed even though they are not perfect triangles. The cells of applicant's invention are not perfect triangles either, since they include more than three sides and curvature along the sides which are absent from a perfect triangle. Thus, the term "triangular" used in this application is considered to mean a shape similar to a triangle. The cells 2 of Hansen et al. are very clearly shaped similar to triangles.

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. (5,928,280) in view of Cox (6,171,334). Hansen et al. fail to disclose connecting elements out of phase. However, Cox teaches that connecting elements 52 may be out of phase which results in the apparent advantage of providing increased flexibility of the stent. It would have been obvious to make the Hansen et al. connecting elements out of phase so that it too would have this advantage. With this

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modification, the connecting elements would be separated by at least two cells as defined in claim 17, noting the spacing of connecting elements 52 of Cox.

Applicant's arguments filed Dec. 28 2004 have been fully considered but they are not persuasive. The peaks of the Hansen et al. cells are admittedly attached to each other (at least indirectly) by the additional connecting sections (depicted by the lines added to the figure of the attached appendix) since one peak is attached to a connecting section which is attached to another peak. However, in applicant's invention, the peaks of the cells are also attached to each other (at least indirectly) by the struts 16, 18 since one peak is attached to a strut 16 which is attached to another strut 18 which is attached to another peak.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

mht
2/9/05



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731